

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

IN RE BANK OF AMERICA CORP.
SECURITIES, DERIVATIVE, AND
EMPLOYMENT RETIREMENT INCOME
SECURITY ACT (ERISA) LITIGATION

Master File No. 09 MDL 2058 (PKC)

ECF CASE

THIS DOCUMENT RELATES TO:

All Securities Actions

**MEMORANDUM OF LAW IN SUPPORT OF MERRILL LYNCH & CO., INC.'S AND
MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED'S MOTION FOR
SUMMARY JUDGMENT**

SHEARMAN & STERLING LLP

Adam S. Hakki
599 Lexington Avenue
New York, NY 10022-6069
Telephone: (212) 848-4000
Facsimile: (212) 848-7179
ahakki@shearman.com

*Attorneys for Merrill Lynch & Co., Inc.
and Merrill Lynch, Pierce, Fenner
& Smith Incorporated*

Defendants Merrill Lynch & Co., Inc. and Merrill Lynch, Pierce, Fenner & Smith Incorporated respectfully join in the arguments made in the Memorandum of Law in Support of Bank of America Corporation's and Banc of America Securities LLC's Motion for Summary Judgment, dated June 3, 2012. For the reasons set forth in the Bank of America Corporation's and Banc of America Securities LLC's memorandum of law, the Court should dismiss the following claims asserted in the Consolidated Second Amended Class Action Complaint, dated October 10, 2010:

- (i) Claims under Section 14(a) of the Securities Exchange Act of 1934 ("Exchange Act"), for lack of evidence of damages;
- (ii) Claims under Sections 10(b) and 14(a) of the Exchange Act, premised on alleged misstatements about Merrill employee bonuses, for lack of evidence of loss causation;
- (iii) Claims under Sections 11 and 12 of the Securities Act of 1933, premised on alleged misstatements about Merrill employee bonuses, on the basis that defendants have satisfied their burden of negating causation; and
- (iv) Claims under Sections 10(b) and 14(a) of the Exchange Act, to the extent those claims are premised on Bank of America Corporation stock price declines on January 12 and 13, 2009, for lack of evidence of loss causation.

Dated: New York, New York
June 3, 2012

Respectfully submitted,

SHEARMAN & STERLING LLP

By: /s/ Adam S. Hakki
Adam S. Hakki
599 Lexington Avenue
New York, NY 10022-6069
Telephone: (212) 848-4000
Facsimile: (212) 848-7179
ahakki@shearman.com

*Attorneys for Merrill Lynch & Co., Inc.
and Merrill Lynch, Pierce, Fenner
& Smith Incorporated*